



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 25, 1997

Ms. Myra C. Schexnayder
Feldman & Rogers, L.L.P.
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR97-2595

Dear Ms. Schexnayder:

On behalf of Clear Creek Independent School District ("CCISD"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111213.

CCISD received a request for various information concerning a certain CCISD employee. You assert that the requested information is excepted from required public disclosure based on sections 552.101, 552.111 and 552.114 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). An agency's policymaking functions do not encompass routine internal administrative and personnel matters. *See id.* The submitted documents concern personnel matters. Consequently, section 552.111 is inapplicable.

Section 552.114 applies to student records. However, when asked about the required public disclosure of student records, this office generally addresses Government Code section 552.026 and the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 5 U.S.C. § 1232g.

Section 552.026 incorporates FERPA into the Open Records Act. FERPA prohibits, in most circumstances, the release of student records without a parent's written consent. 20 U.S.C. § 1232g(b)(1). If a student has reached age eighteen or is attending an institution of post-secondary education, the right established by FERPA attaches to the student rather than to the student's parents. "Education records" for purposes of FERPA are records that contain information directly related to a student and that are maintained by an educational institution or agency. *Id.* § 1232g(a)(5)(B). FERPA protects "personally identifiable information in education records. *See id.* § 1232(b)(2). "Personally identifiable" information means the student's identity would be "easily traceable." *See* Open Records Decision No. 165 (1977). Thus, section 552.026 does not except all information in an education record, but only that information which identifies the student or the student's parents. Open Records Decision No. 332 (1982) at 3.

We agree that CCISD must not release portions of the information that identify CCISD students, parents and former students. *See* Open Records Decision No. 539 (1990). We have marked the documents accordingly.¹ We also note that a tape recording of a student interview would make the identity of the interviewed student easily traceable. We also note that in some cases, the content of a statement could make the identity of a student easily traceable. Thus, the school district may withhold tape recordings of student interviews and other information that could make the identity of a student easily traceable.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

You raise the case of *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), which concerned the release of information pertaining to an investigation of an allegation of sexual harassment. The court found that because pertinent information had been released to the public in summary form, the legitimate public interest in the matter had been satisfied. Therefore, the public did not possess a legitimate interest in the names of witnesses to, or victims of, sexual harassment, in their statements, or in any other information that would tend to identify them.

¹This office has determined that an educational agency or institution may withhold from public disclosure personally identifiable nondirectory information in "education records" as defined in FERPA, which information is excepted from required public disclosure by Government Code section 552.026, without the necessity of requesting an attorney general decision as to that exception. *See* Open Records Decision No. 634 (1995).

This case concerns sexual misconduct, rather than sexual harassment. Furthermore, in this case, the school district does not appear to have released a summary of the investigation. Thus, in accordance with the *Ellen* decision, the public possesses a legitimate interest in the witness statements, but not in the identities of the witnesses. However, as the witnesses to the sexual misconduct were students, and as we have already concluded that FERPA protects personally identifiable information in education records, we believe the coverage of FERPA and of common-law privacy, if any, would be co-extensive in this case.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 111213

Enclosures: Marked documents

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(w/o enclosures)